

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

MAY - 9 2001

In the Matter of)	
)	
Iowa Utilities Board Petition for)	NSD File No. L-01-74
Delegation of Additional Authority)	
)	
Implementation of the Local)	CC Docket No. 96-98
Competition Provisions of the)	
Telecommunications Act of 1996)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF IOWA TELECOMMUNICATIONS SERVICES, INC.

Iowa Telecommunications Services, Inc. ("ITS"), an incumbent local exchange carrier, hereby submits Comments on the Iowa Utilities Board's ("IUB") second petition ("Second Petition") requesting additional delegated authority to conduct a thousands-block number pooling ("TBNP") trial in the 319 area code. The Commission denied the IUB's first petition, for among other reasons, because it failed to address the fact that the rural carriers that serve the 319 area code do not have local number portability (LNP) capability, and so cannot be required to implement TBNP.

ITS is not opposed to the IUB conducting a TBNP trial involving LNP-capable carriers. The IUB, however, asks the FCC to waive the requirement that the majority of wireline carriers to be subjected to the TBNP trial outside the top 100 MSA be LNP capable, yet sets forth no special circumstances that would sufficiently distinguish the 319 area code from other rural area codes across the country to justify such a waiver. ITS opposes the granting of such a waiver.

As set forth in detail in Confidential Exhibit 1, the IUB's requested waiver would require one incumbent LEC alone (ITS) to spend millions of dollars to upgrade switches to LNP capability – exactly the kind of financial impact the FCC sought to prevent when it adopted its rules for TBNP trials. In addition to ITS, there are many other rural LECs serving the 319 area code that would have to make similar investments in LNP capability.

I. Introduction

As numbering resources have become increasingly scarce, the Commission has exercised its statutory “exclusive jurisdiction” over the North American Numbering Plan to develop a national plan for thousand-block number pooling (TBNP).¹ In doing so, the Commission provided clear guidance as to when authority to conduct TBNP trials should be delegated to a state commission: 1) a numbering plan area (“NPA” or “area code”) in its state is in jeopardy; 2) the NPA in question has a remaining life span of at least a year; and, 3) *that NPA is in one of the largest 100 MSAs or, alternatively, the majority of wireline carriers in the NPA are LNP-capable.*²

II. Background and Decision on the IUB's First Petition for TBNP Authority

ITS is an incumbent local exchange carrier serving 285,000 access lines scattered across rural Iowa. The largest community ITS serves is Newton, population 15,000, which is in the 515/641 area codes. The 319 area code covers parts of eastern Iowa, including the cities of Cedar Rapids, Iowa City, and Waterloo. The largest community ITS serves in the 319 area code is Mt. Pleasant, population 8,136. Because ITS has less

¹ 47 U.S.C. Sec. 251(e)(1); *Numbering Resource Optimization First Report and Order*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000) (“*Numbering Resource Optimization First Report and Order*”).

² *Id.* at 7652 (emphasis added).

than 15% of its access lines in communities of 50,000 or more (it has no lines in such communities), ITS qualifies as a “rural telephone company” under the Communications Act.³

ITS began business on July 1, 2000, after purchasing its access lines, and is in the process of upgrading its plant. It has established a five-year capital expansion plan. In accordance with the FCC’s number portability rules for carriers operating outside the top 100 MSAs, the plan does not include upgrades of switches to implement LNP capability, unless requested by a competitive local exchange carrier (CLEC).⁴

Where a CLEC does request LNP, ITS provides it for the end office in which the CLEC is interested and other end offices served by the same base-unit,⁵ not throughout all the end offices within an area code (there are 105 within the 319 area code).⁶ The primary cost of upgrading to LNP capacity is incurred in modifying switches and loading software into those switches. These costs are thus incurred largely on a base-unit-by-base-unit basis, and so there is no need to incur the costs to upgrade all the switches within an area code just because a LNP upgrade is necessary at a particular base-unit or base-units within the area code. ITS, however, would plan to participate in a TBNP trial

³ 47 U.S.C. Sec. 153(37). ITS also qualifies under other alternative standards for rural telephone company status.

⁴ In its number portability rulemaking, the Commission determined that it would be inefficient to require ILECs outside of the top 100 MSAs to undergo the expense of installing LNP capability until six months after a *bona fide* request for LNP is received from a CLEC. See 47 CFR Sec. 52.23(c).

⁵ A base-unit is a host for neighboring central offices (remotes).

⁶ The typical pattern of CLEC entry is for another ILEC with an exchange close to ITS’ service area to cross into ITS’ territory and overbuild in the few exchanges near its existing ILEC facilities.

in those base-units for which it already has LNP capability, because it previously received requests from a CLEC.

After Qwest, ITS is the next largest ILEC within the 319 area code (in terms of access lines). There are many much smaller rural carriers that also serve this portion of Iowa. The IUB's Second Petition indicates at page 3 that these smaller carriers are not LNP-capable.

The state's Regional Bell Operating Company, Qwest, predominantly provides local exchange service to customers in the former 515 area code, although it provides service in the 319 area code as well. Qwest is LNP-capable, and the 515 area code does include Des Moines, located within the 92nd largest MSA. The FCC, in acting upon the IUB's initial petition, granted the IUB authority to conduct a TBNP trial in the 515 area code, but denied without prejudice the IUB's request for authority to conduct a TBNP trial in the 319 area code.⁷ In its Second Petition, the IUB requests a waiver to conduct a TBNP trial in the 319 area code as well as the 515 area code.

III. Discussion

Although ITS generally supports the IUB in seeking to conduct a TBNP trial, ITS opposes any mandatory requirement that carriers become LNP-capable for a TBNP trial.

a. *The standards for grant of TBNP authority are not met.*

An essential element that the FCC requires for granting pooling authority is not present here – the requirement that the area code be in one of the largest 100 MSAs or, alternatively, that a majority of the wireline carriers in the area code be LNP-capable.⁸

⁷ See *Iowa Delegation Order*, FCC Document 00-1616, paragraphs 31-32 (2000).

⁸ *Number Resource Optimization First Report and Order* at 7652.

This is why the IUB requests a waiver. As discussed above, the 319 area code is not in a top 100 MSA and, as reported by the IUB itself, an overwhelming majority of the wireline carriers in the 319 area code are not LNP-capable.⁹

- b. No special circumstances justify distinguishing the 319 area code from other rural area codes for requiring mandatory pooling of non-LNP-capable carriers.*

In order to obtain a waiver of any of the Commission's requirements, including the LNP-capability requirement, good cause must be shown.¹⁰ To do so, a request for a waiver must demonstrate "special circumstances" warranting a deviation from those requirements, and show how such a deviation will serve the public interest.¹¹

The IUB only hints that this is a "special circumstances" case without providing any clear explanation of why this is such a case. In fact, its only reference to "special circumstances" is made summarily in the conclusion of its petition without any supporting evidence of what makes it a case of "special circumstances." That the 319 area code, like many other area codes in the nation, may years from now eventually need more numbers, does not automatically translate this into a case of "special circumstances."

According to the IUB, the 319 area code, after the split, will have a four-year remaining lifespan. This fact and the fact that ITS does serve another area code which includes part of a top 100 MSA are the sole factors mentioned by the IUB in support of its argument that the Commission should depart from established standards.

⁹ Second Petition at 3 (citing responses to data requests issued by the IUB).

¹⁰ 47 C.F.R. Sec. 1.3.

¹¹ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

Were the Commission, however, to grant a waiver permitting states to compel non-LNP capable carriers to acquire the equipment needed for TBNP where the area code has four years or less of remaining life, the waiver would swallow the rule. Every area code in the nation that years from now may need more numbers will, by definition, be eligible for a waiver.

Granting a waiver based on a four-year milestone would reverse the Commission's policy determination that the benefits of TBNP simply do not justify the expense of requiring non-LNP capable carriers to acquire LNP capacity to participate in TBNP. As the Commission stated: "[w]e also emphasize that only those carriers that have implemented LNP capability shall be subject to pooling and a state commission does not have authority to require LNP capability solely for the purpose of being able to participate in pooling."¹²

Nor does the fact that ITS serves some customers in a top 100 MSA in a different area code (the 515 area code) than the area code under consideration (the 319 area code) justify imposing a mandate to acquire LNP capability company-wide. The hardware and software costs of upgrading to LNP capacity are incurred incrementally on a base-unit-by-base-unit basis rather than on an area-code by area-code basis. There is no reason to incur the substantial upgrade costs for the 319 area code, as demonstrated in Confidential Exhibit 1, just because there are some exchanges in the 515 area code for which such upgrades are necessary.

Were the FCC to require non-LNP-capable carriers to become LNP-capable, it could create budgetary hardships on these companies. Such a requirement would, for ITS

¹² *Numbering Resource Optimization First Report and Order* at 7652.

specifically, create substantial financial burdens. Attached hereto is Confidential Exhibit 1, which provides specific numerical data demonstrating the burden that ITS would encounter if LNP-capability were to be required. As this information is proprietary and confidential in nature, ITS respectfully requests that the Commission treat this Exhibit confidentially in accordance with 47 C.F.R. Sec. 0.459. The information contained in the exhibit is proprietary commercial and financial data, which, if made public, would result in competitive harm to ITS.

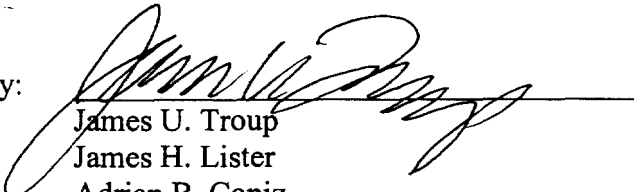
ITS supports the industry's and FCC's efforts at developing a nationwide, uniform system of numbering and believes that the Commission should continue to focus on the national program. While the national program is implemented, ITS is supportive of interim pooling authority, but is strongly opposed to making such interim pooling mandatory for non-LNP-capable carriers. State-by-state deviation from the national policy set forth by the Commission should not be permitted. Requiring telecommunications companies operating in rural markets such as the 319 area code to make unexpected expenditures, such as upgrading to LNP-capability at this time, would retard their ability to make voice mail, DSL, and advanced telecommunications services available to their rural subscribers, which in turn, would limit competition and consumer choice.

IV. Conclusion

For the reasons stated above, Iowa Telecommunications Services, Inc. respectfully requests that the Commission deny the Iowa Utility Board's request for authority to compel carriers that lack LNP capability to participate in thousands-block number pooling trial in the 319 area code.

Respectfully submitted,

Iowa Telecommunications Services, Inc.

By: 
James U. Troup
James H. Lister
Adrian B. Copiz

ARTER & HADDEN, LLP
1801 K Street, N.W., Suite 400K
Washington, D.C. 20006-1301
Tel: 202-775-7100
Fax: 202-857-0172

Counsel for Iowa Telecommunication Services, Inc.

Dated this 9th day of May, 2001.

CONFIDENTIAL EXHIBIT 1

SUPPORT FOR CONFIDENTIAL TREATMENT OF CONFIDENTIAL EXHIBIT 1

CC Dockets 96-98 and 99200, File No. NSD-L-01-74

As the information contained in this exhibit is proprietary and confidential in nature, Iowa Telecommunications Services, Inc. ("ITS") respectfully requests that the Commission treat this exhibit confidentially in accordance with 47 C.F.R. Sec. 0.459. In support of its request for confidentiality, ITS provides the following information:

1. ITS seeks confidential treatment for the numerical data reflecting the costs associated with achieving LNP-capability.
2. This confidential information is submitted in the pleading cycle initiated by the Iowa Utility Board's petition for delegated authority, CC Dockets 96-98 and 99-200, File No. NSD-L-01-74.
3. The information is proprietary and confidential commercial and financial data that is specific to ITS.
4. The confidential information concerns services that are subject to competition, namely, local and long distance services. Such services, as rendered by ITS, are currently undergoing significant degrees of competition through offerings by a wide variety of telecommunications service providers. Numerous facilities-based CLECs are operating in ITS' service area, as are numerous long distance carriers.
5. Disclosure of the confidential information would likely result in substantial competitive harm to ITS. This information could be utilized by competitors to determine means by which to decrease and/or limit the market share and revenues of ITS, elements critical to the successful execution of ITS' business plan. Cost information could be used to determine the margins of ITS' business operations, including prospective operations requiring SS7 capability.
6. ITS has maintained the confidential information within its internal electronic and non-electronic databases, which are subject to the company's premises and computer security measures. The client has not previously shared this data and has instructed its counsel to maintain its confidentiality.
7. To the knowledge of ITS, the confidential information has not been made available to the public or to any third parties.
8. The confidential information should not be made available to the public at anytime, whether during the proceedings or at anytime thereafter. Doing so would allow competitors to access information that would aid them in developing strategies potentially

undermining ITS' competitive efforts. Even gaining access to such information after the conclusion of this proceeding could allow competitors to use it against ITS' interests.

9. ITS, by its counsel, believes the information provided above is sufficient for granting confidential treatment of the numerical data contained in Confidential Exhibit 1. Therefore, for these reasons, ITS respectfully requests that the information contained in Confidential Exhibit 1 be given confidential treatment and not be routinely available to public inspection.

James U. Troup
James H. Lister
Adrian B. Copiz

ARTER & HADDEN, LLP
1801 K Street, N.W., Suite 400K
Washington, D.C. 20006-1301
Tel: 202-775-7100
Fax: 202-857-0172

Counsel for Iowa Telecommunications Services, Inc.

CONFIDENTIAL EXHIBIT 1

Comments of
Iowa Telecommunications Services, Inc.
CC Docket 96-98 and 99-200
File No. NSD-L-01-74